

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2020
PRONOUNCED ON : 28.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.28809 of 2017
AND
CRL.M.P.No.16309 of 2017

M/s.Chennai Guest House Pvt. Ltd.
Rep. by its Director and Authorised Signatory
Geetha
Old No.32, New No.65/1.
Wallajah Road, Triplicane
Chennai 600 005 ... Petitioner

Vs.

1.M/s.Indian Bank Ltd.
Rep. by its Authorized Officer
A.S.N.Prasad
Guindy Branch
No.131, SIDCO Building
GST Road, Guindy
Chennai 600 032

2.M/s.ABM Infotech
Old No.32, New No.65/1
Wallajah Road, Triplicane
Chennai 600 005
Rep. by its Partners

3.B.Alagarasan
Partner - M/s.ABM Infotech
Old No.32, New No.65/1
Wallajah Road, Triplicane
Chennai 600 005

4.A.Viji
Partner - M/s.ABM Infotech
No.6, Parthasarathy Swami Lane
Triplicane, Chennai 600 005

5.S.Balan

6.B.Manimegalai

7.S.Geetha

(R5 to R7) are the Directors of
Chennai Guest House Pvt. Ltd.
No.6, Parthasarathy Swami Lane
Triplicane, Chennai 600 005

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records comprised in CrI.M.P.No.388 of 2017 pending on the file of the Chief Metropolitan Magistrate, Allikulam, Chennai and quash the same insofar as this petitioner company is concerned.

For Petitioner : Mr.M.N.S.Mohamed Habeed Raja

For 1st Respondent : Mrs.S.R.Sumathy

For R2 to R7 : No appearance

O R D E R

On 06.10.2020, this Court passed the following order :

"When the matter was taken up for hearing, learned counsel for the petitioner sought adjournment to 15.10.2020.

2. Mrs.S.R.Sumathy, learned counsel for the first respondent was contacted over phone and she expressed her inability to come for physical hearing on account of the fact that she has an aged mother-in-law at home. However, she stated that she has filed a counter and also a detailed typed set of papers. She further contended that possession has been taken by the Bank, which is contested by the petitioner.

3. Post the matter 'for orders' on 15.10.2020."

2. On 15.10.2020, Mr.Mohanakrishnan, Advocate submitted that change of vakalat has been given by the petitioner and sought further time. This Court explained to him the legal position that the High Court has no jurisdiction to entertain this Criminal Original Petition under Section 482 Cr.P.C.

3. M/s.Indian Bank Ltd. filed a petition in CrI.M.P.No.388 of 2017 in the Court of the Chief Metropolitan Magistrate, Chennai under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002, for appointment of an Advocate Commissioner to take possession of a property said to be belonging to the petitioner herein, in which, the learned

Magistrate passed an order dated 13.04.2017, appointing one Mr.P.Suresh Advocate as Advocate Commissioner to take possession. Challenging these proceedings, this Criminal Original Petition under Section 482 Cr.P.C. has been filed.

4. Section 14 of SARFAESI Act reads as follows :

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset --

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him --

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority."

5. A mere reading of the above provision shows that, the Chief Metropolitan Magistrate is a persona designata under the SARFAESI Act and his orders cannot be challenged under Section 482 Cr.P.C. The remedy to the petitioner is only in the Tribunals constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993) and not before this Court under Section 482 Cr.P.C.

Hence, this Criminal Original Petition is closed with liberty to the petitioner to workout his remedies if any, in the manner known to law. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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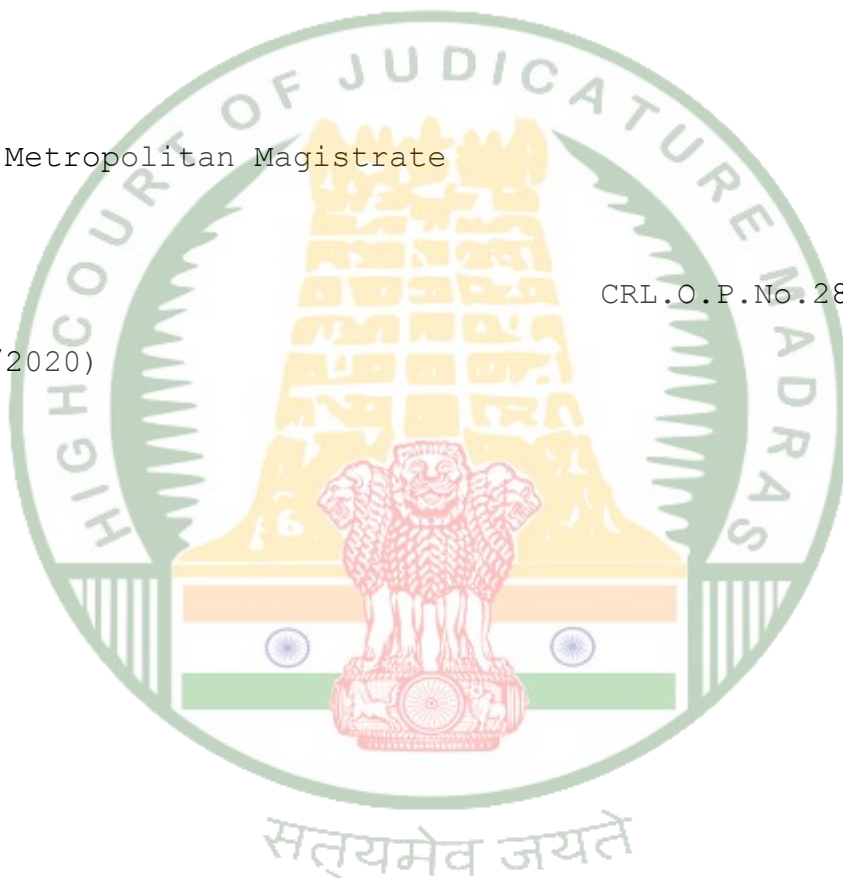
Sub Assistant Registrar

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To
The Chief Metropolitan Magistrate
Allikulam

PP (CO)
RMP (02/12/2020)

CRL.O.P.No.28809 of 2017



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